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United Nations / International Maritime Organization

Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages

Distr.
LIMITED

A/CONF.162/L.2
29 April 1993

Original: ENGLISH

Geneva, 19 April 1993
Agenda item 8

PREPARATION AND ADOPTION OF A CONVENTION ON MARITIME LIENS AND MORTGAGES

Draft articles for a convention on maritime liens and mortgages, referred by the Main Committee to the Drafting Committee

CONTENTS

Articles		Page
Article 1	Recognition and enforcement of mortgages, "hypothèques" and charges	2
Article 2	Ranking and effects of mortgages, "hypothèques" and charges	3
Article 3	Change of ownership or registration	3
Article 4	Maritime liens	4
Article 5	Priority of maritime liens	5
Article 6 bis	Rights of retention	6
Article 7	Characteristics of maritime liens	6
Article 9	Assignment and subrogation	6
Article 10	Notice of forced sale	7

DRAFT ARTICLES FOR A CONVENTION ON MARITIME LIENS AND MORTGAGES

Article 1

Recognition and enforcement of mortgages, "hypothèques" and charges

Mortgages, "hypothèques" and registerable charges of the same nature, which registerable charges of the same nature will be referred to hereafter as "charges", effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

(a) such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;

(b) the register and any instruments required to be deposited with the register in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar; and

(c) either the register or any instruments referred to in subparagraph/(b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the national law of the State of registration, or, otherwise, if that amount is specified in the instrument creating the mortgage, "hypothèque" and charge, and the date and other particulars which, according to the law of the State of registration, determine the rank as respects other registered mortgages, "hypothèques" and charges.

Article 2

Ranking and effects of mortgages, "hypothèques" and charges

The ranking of registered mortgages, "hypothèques" or charges, as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

Article 3

Change of ownership or registration

1. With the exception of the cases provided for in articles 10 and 11 of the present Convention, in all other cases that entail the deregistration of the vessel from the national register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all mortgages, "hypothèques" or charges are previously deregistered or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained. Where the deletion of the vessel is obligatory in accordance with the national legislation of a State Party, the holders of mortgages, "hypothèques" or charges as set out in article 10, paragraph 1(b) and (c) shall be notified in order to enable such holders to take appropriate action to protect their interests. Unless the holders consent, the deletion shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. .....

Article 4

Maritime liens

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for salvage; [1]

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure the claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

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[1] Drafting Committee to prepare wording to clarify that salvage does not include special

(a) damage which arises out of the carriage of oil or other hazardous and noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national legislations which provide for strict liability and compulsory insurance or other means of securing the claimants;

or

(b) the radioactive properties or combination of radioactive properties with toxic, explosive or other hazardous properties or nuclear fuel or of radioactive product or waste.

Article 5
Priority of maritime liens

1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in article 6 bis. [2]

2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for salvage [3] shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank pari passu as between themselves.

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[2] Reference to article 6 bis to be decided when article 6 bis is finalized.

[3] Drafting Committee to prepare wording to clarify that salvage does not include special

4. The maritime liens securing claims for salvage set out in subparagraph (c) of paragraph 1 of article 4 shall rank in the inverse order of the time when the claim secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

Article 6 bis

Rights of retention

1. Each State Party may grant under national law a right of retention in respect of a vessel in possession of either:

(a) a shipbuilder, to secure claims for the building of the vessel; or

(b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel effected during such possession.

2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.

Article 7

Characteristics of maritime liens

Subject to the provisions of article 11, the maritime liens set out in article 4 follow the vessel, notwithstanding any change of ownership or of registration or of flag.

Article 9

Assignment and subrogation

1. The assignment of or subrogation to a claim secured by a maritime lien set out in article 4 entails the simultaneous assignment of or subrogation to such maritime liens.

2. Claimants holding liens may not be subrogated in the compensation payable to the owner of

Article 10

Notice of forced sale

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

(a) the authority in charge of the register in the State of registration;

(b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;

(c) all holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and

(d) the registered shipowner.

2. .....

3. .....